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EZZEN HEIGHTS SDN BHD

v.

IKHLAS ABADI SDN BHD

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HIGH COURT MALAYA, JOHOR BAHRU
MOHD ZAWAWI SALLEH JC
[ORIGINATING SUMMONS NO: MT3-24-599-2009]
3 SEPTEMBER 2009

C ***LAND LAW:*** *Ownership - Dispute - Joint venture agreement and irrevocable power of attorney - Whether valid - Rule in Turquand's case - Valuable consideration - Notice of contravention - Good faith - Defaulting party benefiting from its own default - Whether time of essence - Estoppel - Beneficial ownership - Powers of Attorney Act 1949, s. 6 - Companies*
D *Act 1965, s. 132C(1), (3)*

LAND LAW: *Power of attorney - Irrevocable power of attorney - Creation - Registration - Valuable consideration - Validity of irrevocable power of attorney - Powers of Attorney Act 1949, s. 6*

E ***COMPANY LAW:*** *Directors - Disposal of company's property - Joint venture agreement and irrevocable power of attorney - Whether valid - Rule in Turquand's case - Valuable consideration - Notice of contravention - Good faith - Defaulting party benefiting from its own default - Whether time of essence - Estoppel - Beneficial ownership - Powers of Attorney Act*
F *1949, s. 6 - Companies Act 1965, s. 132C(1), (3)*

COMPANY LAW: *Joint venture - Joint venture agreement and irrevocable power of attorney - Whether valid - Rule in Turquand's case - Valuable consideration - Notice of contravention - Good faith - Defaulting*
G *party benefiting from its own default - Whether time of essence - Estoppel - Beneficial ownership - Powers of Attorney Act 1949, s. 6 - Companies Act 1965, s. 132C(1), (3)*

CONTRACT: *Joint venture - Joint venture agreement and irrevocable*
H *power of attorney - Whether valid - Rule in Turquand's case - Valuable consideration - Notice of contravention - Good faith - Defaulting party benefiting from its own default - Whether time of essence - Estoppel - Beneficial ownership - Powers of Attorney Act 1949, s. 6 - Companies Act 1965, s. 132C(1), (3)*

I

CONTRACT: *Breach - Joint venture agreements - Defaulting party relying on its own breach to terminate joint venture agreement - Whether tantamount to allowing defaulting party to benefit from its own default*

This was an application by the plaintiff seeking, *inter alia*, a declaration that a Joint Venture Agreement ('JVA') and an Irrevocable Power of Attorney ('IPA'), both dated 4 January 2007 and both pertaining to a building constructed on certain land, were null and void or, alternatively, a declaration that the IPA was invalid and annulled. The JVA was executed by the former directors of the plaintiff pursuant to a resolution of theirs dated 2 January 2007. The IPA was prepared pursuant to cl. 5(xv) of the JVA, executed by the authorised directors according to their resolution, attested by the plaintiff's own JVA solicitors and forwarded to the defendant's solicitors on 10 January 2007. The plaintiff essentially relied on the following grounds in support of its application: (i) the IPA was not registered in the High Court of Johor Bahru; (ii) the plaintiff's approval of the IPA was not obtained at the General Meeting; (iii) the IPA had failed to comply with s. 132C Companies Act 1965 ('CA'); and (iv) the defendant had failed to obtain approval (for the building's amended building plans) within the six-month time frame and no extension of time was made by both parties.

Held (dismissing the application with costs):

(1) The IPA was created in accordance with the directors' resolution dated 2 January 2007 and registered in the High Court of Johor Bahru in accordance with the Powers of Attorney Act 1949 ('PAA'). The registration number of the IPA was 282/2007 as evidenced by the court's endorsement at p. 63 of the defendant's affidavit in reply. The registration was in full compliance with the PAA and the IPA was expressed to be for valuable consideration. Pursuant to s. 6 PAA, the IPA was valid and irrevocable and could not be declared null and void. *Mohamed Moidu Mohamed & Anor v. Hassan Kadir & Ors* (foll). (para 8)

(2) As regards (ii), in view that the defendant was dealing with the plaintiff in good faith at all material times and acting on the directors' resolution, the defendant was well protected under the rule in *Turquand*'s case. Furthermore, the defendant did not

need to enquire into the regularity of the plaintiff's internal affairs and proceedings, and could assume that all was being done regularly. Following that, the JVA and the IPA were duly and validly created. *Mahfuz Hashim v. Koperasi Pekebun Kecil Daerah Segamat & Ors* (foll). (para 7)

(3) The IPA was not a "disposition" within the purview of s. 132C(1) CA and, therefore, the plaintiff's approval under that provision was wholly inapplicable in support of this application. Even assuming that the IPA attracted s. 132C(1) CA and the plaintiff's approval in a general meeting had not been obtained, the IPA was still valid under s. 132C(3) CA, provided the IPA was for valuable consideration and the defendant had no actual notice of the contravention. In the defendant's case, the IPA was expressly stated for valuable consideration and the defendant had no actual notice of the contravention and at all material times had acted in good faith when dealing with the plaintiff in accordance to the director's resolution. Following that, the proviso of s. 132C(3) CA was satisfied and the IPA was thus valid and subsisting. Further, the IPA was irrevocable pursuant to s. 6 PAA by virtue of its registration in accordance to the PAA, and non-compliance on the part of the plaintiff in respect of s. 132C(1) CA could not revoke the IPA. *Chan Thiam Teng v. Ban Swee Heng* (foll). (paras 9, 10 & 11)

(4) The parties had expressly agreed that the contractual obligation of obtaining the approval from the appropriate authorities rested on the plaintiff and not the defendant. The plaintiff had breached the contract and had relied on its own breach to put an end to the JVA, which was tantamount to allowing a defaulting party *ie*, the plaintiff, to benefit from its own default. Although the six-month time frame for obtaining the approval had expired, the defendant chose to accept the plaintiff's performance after the relevant time frame. As such, time was no more of the essence. The plaintiff's conduct thereafter, on the facts of this case, estopped it from raising any issues including, but not limited to, the four grounds in support of this application. *Gimstern Corporation (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd* (foll); *Sim Chio Huat v. Wong Ted Fui* (foll). (paras 12, 13, 15, 16, 18 & 19)

(5) The defendant had delivered to the plaintiff the CPC and CFO of the building together with vacant possession of the plaintiff's entitlement under cl. 3(a) of the JVA, namely the four lots of four-storey shop-offices in the building. Therefore, with effect from the completion date, the defendant was the beneficial owner of the land, save and except for the plaintiff's lots. (paras 21 & 22)

Case(s) referred to:

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

Chan Thiam Teng v. Ban Swee Heng Sdn Bhd [1992] 1 LNS 37 HC ***(foll)***

Golden Vale Golf Range Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd [2008] 6 CLJ 31 CA ***(refd)***

Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd [1987] 1 CLJ 123; [1987] CLJ (Rep) 102 ***(refd)***

Hew Sook Ying v. Hiw Tin Hee [1992] 3 CLJ 1325; [1992] 1 CLJ (Rep) 120 SC ***(refd)***

Lee Soh Hua v. Kow Lup Piow & Ors [1984] 2 CLJ 85; [1984] 1 CLJ (Rep) 191 FC ***(refd)***

Mahfuz Hashim v. Koperasi Pekebun Kecil Daerah Segamat; Rashid Omar & Anor (Third Party) [2004] 8 CLJ 402 HC ***(refd)***

Mohamed Moidu Mohamed & Anor v. Hassan Kadir & Ors (No 2) [2001] 6 CLJ 533 ***(foll)***

Sim Chio Huat v. Wong Ted Fui [1983] 1 CLJ 178; [1983] CLJ (Rep) 363 ***(refd)***

Teh Poh Wah v. Seremban Securities Sdn Bhd [1996] 4 CLJ 16; [1996] 1 BLJ 463 CA ***(refd)***

Legislation referred to:

Companies Act 1965, s. 132C(1), (3)
Contracts Act 1950, s. 56(1), (3)
Evidence Act 1950, s. 92
Powers of Attorney Act 1949, s. 6

For the plaintiff - Yahya Chua; M/s Ananth & Assocs
For the defendant - Wong Boon Lee; M/s Gulam & Wong

Reported by Suresh Nathan

JUDGMENT

Mohd Zawawi Salleh JC:

Application

[1] This is the plaintiff's application (encl. 2) seeking for, *inter alia*, a declaration that the Joint Venture Agreement ("JVA") and

A the Irrevocable Power of Attorney ("IPA") both dated 4 January 2007 is null and void or alternatively a declaration that the IPA is invalid and annulled.

[2] The following affidavits have been filed by the parties herein
B in respect of the said application:

(a) the affidavit in support of the plaintiff affirmed by Mr. Kang Hock Hin on 5 March 2009 ("said supporting affidavit") (encl. 3);

C (b) the affidavit in reply of the defendant affirmed by Mr. Oh Kian Seng on 28 April 2009 ("said affidavit in reply of the defendant") (encl. 5);

(c) the affidavit in reply of the plaintiff affirmed by Mr. Kang Hock
D Hin on 15 May 2009 ("said reply affidavit of the plaintiff") (encl. 6);

(d) the affidavit in reply of the defendant affirmed by Mr. Oh Kian Seng on 10 June 2009 ("said affidavit in reply of the defendant
E (2)") (encl. 7);

(e) the affidavit in reply of the plaintiff affirmed by Mr. Kang Hock Hin on 25 June 2009 ("said reply affidavit of the plaintiff (2)") (encl. 10);

F (f) the affidavit in reply of the defendant affirmed by Mr. Oh Kian Seng on 3 July 2009 ("said affidavit in reply of the defendant (3)") (encl. 9);

(g) the Supplementary Affidavit of the defendant affirmed by Mr.
G Wong Kong Teck on 3 July 2009 ("said Supplementary Affidavit of the defendant") (encl. 8);

(h) the affidavit in reply of the plaintiff affirmed by Mr. Kang Hock Hin on 10 July 2009 ("said reply affidavit of the plaintiff (3)") (encl. 11); and
H

(i) the Supplementary Affidavit of plaintiff affirmed by Mr. Kang Hock Hin on 24 August 2009 ("said Supplementary Affidavit of the plaintiff") (encl. 15).

I **[3]** After hearing the parties, I dismissed the application with costs.

[4] There are essentially four (4) grounds relied upon by the Plaintiff in support of the said application as deposed in paras 7 and 9 of the said supporting affidavit as follows: A

(a) the IPA was not registered in the High Court of Johor Bahru;

(b) the IPA had failed to obtain the approval of the plaintiff at the General Meeting; B

(c) the IPA had failed to comply with s. 132C of the Companies Act 1965; and

(d) the defendant had failed to obtain the approval within the six (6) months time frame and no extension of time was made by both parties. C

[5] I shall now deliver my reasons on the four (4) grounds raised by the plaintiff. D

First And Second Grounds

[6] The JVA was executed by the former directors of the plaintiff's company, namely, Yong Siok Cheng and Yong Ee Chuang and affixed with the common seal of the plaintiff's company pursuant to the directors' resolution dated 2 January 2007 duly and validly passed in accordance with the articles of association of the plaintiff's company. (See exh. OKS2 of the said affidavit in reply of the defendant at pp. 65-66). The IPA was prepared pursuant to cl. 5(xv) of the JVA, executed by the authorized directors in accordance to the directors' resolution of the plaintiff, attested by the plaintiff's own JVA solicitors and forwarded to the defendant's solicitors on 10 January 2007. It is settled law that the plaintiff is bound by its own directors' resolution properly passed for the purposes of creating the IPA in favour of the defendant and until it is annulled, the resolution for the JVA and IPA shall bind and continue to bind the plaintiff. Likewise, in *Chan Thiam Teng v. Ban Swee Heng Sdn. Bhd* [1992] 1 LNS 37; [1992] 2 MLJ 583, James Foong J (as he then was) in delivering his judgment said at p. 586 that: E F G H

> The Defendants also contended that the said resolution has lapsed due to effluxion of time. I find no authority from the Defendant's counsel to support this point; neither was there any evidence whatsoever either expressed or by implication, that this resolution I

A has been annulled. A resolution properly passed, which is so in this case, is binding on the Defendants and until it is dissolved, cancelled or annulled, expressly or by implication, it binds the Defendants on actions taken by the director who had acted within the ambit of the resolution.

B **[7]** The plaintiff claims that the IPA had failed to obtain the approval of the plaintiff at the general meeting. However, in view that the defendant was dealing with the plaintiff in good faith at all material times and acting on the directors' resolution of the plaintiff, the defendant is well protected under the rule in C *Turquand*'s case. Furthermore, the defendant does not need to enquire into the regularity in the internal affairs and proceedings of the plaintiff company and may assume that all is being done regularly. Following that, the JVA and IPA were duly and validly created. Similarly, in *Mahfuz Hashim v. Koperasi Pekebun Kecil* D *Daerah Segamat; Rashid Omar & Anor (Third Party)* [2004] 8 CLJ 402, Jeffrey Tan J (as he then was) in delivering his judgment said at p. 413 that:

In short, the rule in *Turquand*'s case provides protection to persons E dealing with the company in good faith (see *Standard Chartered Bank v. Central Wood Tiles Sdn. Bhd* [1990] 2 MLJ 361, where it was held by Haidar (as he then was) that the rule in *Turquand*'s case only applies to persons dealing in good faith). An outsider dealing with the company does not need to enquire into the regularity in the internal affairs and proceedings of the company, and F may assume that all is being done regularly (see *K. Sivapragasam a/l Krishnar v. Renominium Development Sdn. Bhd. & Ors* [1998] 4 CLJ 481).

(See also the case of *Hew Sook Ying v. Hiw Tin Hee* [1992] 3 CLJ G 1325; [1992] 1 CLJ (Rep) 120).

[8] The IPA was created in accordance with the directors' resolution of the plaintiff dated 2 January 2007 and registered in the High Court of Johor Bahru in accordance with the Powers of Attorney Act 1949 ("PA 1949") and the registration number of the H IPA is 282/2007 as evidenced by endorsement of the court at p. 63 of the said affidavit in reply of the defendant. The registration is in full compliance with the PA 1949 and the IPA was expressed to be for valuable consideration. Pursuant to s. 6 of the PA 1949, the IPA is valid and irrevocable and could not be declared null and void. I Similarly, in *Mohamed Moidu Mohamed & Anor v. Hassan Kadir & Ors (No 2)* [2001] 6 CLJ 533, the High Court at p. 539 held that:

There was a binding agreement upon the terms of the deed of sale which was duly executed by the parties therein, stamped and registered with the High Court. The deed of sale had fulfilled all the requirements of the Powers of Attorney Act 1949 ("the Act") by reason of its authentication before a commissioner for oaths and deposited and duly registered in court. The power of attorney granted was expressed to be for valuable consideration, and hence under section 6 of the Act it could not be revoked.

Third Ground

[9] The IPA is not a "disposition" within the purview of s. 132C(1) of the Companies Act 1965 ("CA 1965") and therefore the approval by the plaintiff's company in general meeting under that provision is wholly inapplicable in support of the said application. Even assuming the IPA attracts s. 132C(1) CA 1965, and the approval by the plaintiff's company in general meeting is not obtained, the IPA is still valid under s. 132C(3) CA 1965, provided the IPA is for valuable consideration and the defendant had no actual notice of the contravention. Section 132C(3) reads as follows:

A transaction entered into in contravention of subsection (1) shall in favour of any person dealing with the company for valuable consideration, and without actual notice of the contravention, be as valid as if that subsection has been complied with. (emphasis added).

[10] In the defendant's case, the IPA is expressly stated for valuable consideration and the defendant had no actual notice of the contravention and that at all material time the defendant had acted in good faith when dealing with the plaintiff in accordance to the directors' resolution of the plaintiff. Following that, the proviso of s. 132C(3) CA 1965 are satisfied and therefore the IPA is valid and subsisting. Similarly, in *Chan Thiam Teng v. Ban Swee Heng Sdn Bhd* [1992] 1 LNS 37; [1992] 2 MLJ 583, James Foong Jin (as he then was) delivering his judgment said at p. 586 that:

It is not disputed that no approval of the Defendants in general meeting for the sale of this said property was obtained. As such section 132C of the Act has been contravened. However, from the evidence adduced by the affidavits, I find that the Plaintiff had no notice of this contravention and, since the sale and purchase of this said property is for valuable consideration, this transaction is valid under section 132C(3) of the Act.

[11] Further, the IPA is irrevocable pursuant to s. 6 of the PA 1949 by virtue of its registration in accordance to the PA 1949 and the non-compliance on the part of the plaintiff in respect of s. 132C(1) CA 1965 could not revoke or declare the IPA null and void (See *Mohamed Moidu Mohamed & Anor v. Hassan Kadir & Ors (No 2)* [2001] 6 CLJ 533).

Fourth Ground

[12] The parties herein have expressly agreed under cl. 2(a) of the JVA that the contractual obligation of obtaining the approval from the appropriate authorities for the amended building plans of the said building rests on the plaintiff and not on the defendant. Therefore, the contractual obligation rests on the defendant would clearly offend the Parol Evidence Rule under s. 92 of the Evidence Act 1950. Likewise, in *Lee Soh Hua v. Kow Lup Piow & Ors* [1984] 2 CLJ 85; [1984] 1 CLJ (Rep) 191, the Federal Court at p. 191 held that:

> [1] On the facts of the case, oral evidence should not be admitted. When a contract has been reduced to the form of the document, s. 91 of the Evidence Act excludes the admission of oral evidence unless otherwise expressly provided in the Act. Similarly, oral evidence is excluded under s. 92 to contradict, vary, add to or subtract from the terms expressed in the document.

[13] It is further expressly agreed that the time frame for the plaintiff to obtain the approval for the amended building plans is six (6) months from the JVA date (4 January 2007), namely, on or before 4 July 2007. In the event the plaintiff is unable to obtain the said approval by 4 July 2007, the parties herein can extend time pursuant to cl. 2(b) of the JVA.

[14] In breach of cl. 2(b) of the JVA, the plaintiff's appointed architects, Ho & Associates, had submitted for approval the amended building plans *vide* letter dated 28 August 2007 to the Pejabat Majlis Daerah Mersing only on 3 September 2007. (See exh. OKS6 of the said affidavit in reply of the defendant at p. 88). The said amended building plans were only approved by the Pejabat Majlis Daerah Mersing on 4 November 2007. The Pejabat Majlis Daerah Mersing had informed the plaintiff of the said approval through their letter dated 1 December 2007. (See exh. KHH7 of the said reply affidavit of the plaintiff at p. 16).

[15] The plaintiff in breach of cl. 2(b) of the JVA was only granted with the approval on 4 November 2007 ie, beyond the six (6) months time frame as evidenced from the plaintiff's own exhibit of KHH7 above. The plaintiff in support of the said application had relied upon its own breach to put an end to the JVA pursuant to the letter of termination dated 10 February 2009 (See exh. KHH4 of the said supporting affidavit) after the completion date ie, on 2 January 2009, the date on which the defendant had delivered to the plaintiff the CPC, CFO and VP of its four (4) lots under cl. 4(i) of para. 4(c) above. In the considered opinion of the court, to allow the plaintiff to put an end to the JVA based on its own breach tantamount to allowing a defaulting party ie, the plaintiff to benefit from its own default. In *Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co. Sdn Bhd* [1987] 1 CLJ 123; [1987] CLJ (Rep) 102 where Wan Hamzah, SCJ in delivering the judgment of the Supreme Courts said at p. 104 that:

> The rule is that if a stipulation in a contract be that the contract shall be void on the happening of an event which one or either of the parties can by his own act or omission bring about, then the party who by his own act or omission brings that even about, cannot be permitted either to insist upon the stipulation himself or to compel the other party who is blameless, to insist upon it, because to permit the blameable party to do either would be to permit him to take advantage of his own wrong to put an end to the contract, *vide* the judgment of Lord Atkinson in *New Zealand Shipping Company Ltd v. S.D.A.E.C.D. France* ...

(See also the case of *Golden Vale Golf Range Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd* [2008] 6 CLJ 31).

[16] Pursuant to cl. 14 of the JVA, time whenever mentioned, shall be of the essence of the JVA which is subject to and conditional upon the plaintiff obtaining the approval by 4 July 2007. The six (6) months time frame for obtaining the approval had expired and in the circumstances the JVA is voidable at the option of the defendant pursuant to s. 56(1) of the Contract Act 1950 ("CA 1950"). The defendant had elected not to terminate the JVA, instead acquiesced the contractual performance of the plaintiff after 4 July 2009 under s. 56(3) CA 1950. As such time is no more of the essence. In *Sim Chio Huat v. Wong Ted Fui* [1983] 1 CLJ 178; [1983] CLJ (Rep) 363, Lee Hun Hoe CJ (Borneo), in delivering the judgment of the Federal Court said at p. 366 that:

A In modern law of contract *prima facie* a stipulation as to time is not of the essence of a contract unless the parties agree that it be so. (See Lord Simon of Glaisdale in *United Scientific v. Burnley Council*). In this case as time was provided to be of the essence of the agreement, the stipulated periods within which these four
B houses had to be delivered to the respondents became an essential condition of the agreement. Failure by the appellant to fulfil this condition would entitle the Respondent to have an option of treating the agreement wither (a) as having been repudiated and dismissing the appellant; or (b) as still continuing. (See also *9 Halsbury's Laws of England*, 4th edn. para 538, page 370).

C **[17]** In this case, obviously he did not choose to treat the agreement as having been repudiated. By allowing the delivery date to pass and by acquiescing in the work continuing under the agreement and indeed by ordering extra work to be done for each
D of these houses, for which the agreement made no provision, the appellant must be held to have waived his right to rescind the agreement on account of repudiation and also the right to treat himself discharged therefrom. He must be deemed to have elected the agreement as still continuing.

E **[18]** In view that the defendant had elected not to repudiate the JVA, the plaintiff had continued to perform its contractual obligation stipulated in the JVA after 4 July 2007 and the defendant had continued to accept the performance of the plaintiff. In the circumstances, time in the JVA is extended pursuant to cl. 2(b) of
F the JVA by the act or omission of both parties. The plaintiff's act or omission extending time under cl. 2(b) of the JVA after 4 July 2007 are, *inter alia*, as follows:

(a) On 20 July 2007, the plaintiff had discharged the said land
G from Public Bank Berhad pursuant to clause 5(xi) of the JVA;

(b) On 3 September 2007, the said amended building plans were submitted for approval by the plaintiff's architect, Ho & Associates under cl. 2(a) of the JVA;

H (c) On 1 December 2007, the said building was certified to be completed by the plaintiff's architect, Ho & Associates;

(d) On 10 October 2008, the plaintiff's director, Mr. Kang was present during the site meeting;

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(e) In 2008, the plaintiff's director Mr. Kang had personally forwarded to Mr. Oh the original copies each of the CFO totaling twelve pieces all dated 27 November 2008 for the safekeeping of the defendant; A

(f) In 2008 and 2007, at the request of Mr. Kang, the defendant had settled the plaintiff's debts owed to Can Piling & Construction Sdn. Bhd. totaling RM60,000; B

(g) On 2 January 2009, the plaintiff had accepted the CPC and CFO of the said building together with VP of the plaintiff's entitlement under cl. 3(a) of the JVA namely the four (4) lots of four (4) storey shopoffices comprised in the said building constructed on the said land; and C

(h) Somewhere in January 2009, the plaintiff's director, Mr. Kang had furnished to the defendant a copy of the directors' resolution of the plaintiff dated 14 January 2009 authorising the strata title application. D

[19] In view of the plaintiff's conduct above, followed by the delivery of the CPC, CFO and VP of the four (4) lots under cl. 4(i) of the JVA, the plaintiff is now estopped from raising any issues including but not limited to the four (4) grounds in support of the application. Please see the following authorities: E

a. *Boustead Trading (1985) Sdn. Bhd. v. Arab-Malaysian Merchant Bank Bhd.* [1995] 4 CLJ 283, Federal Court; and F

b. *Teh Poh Wah v. Seremban Securities Sdn. Bhd* [1996] 4 CLJ 16; [1996] 1 BLJ 463, Court of Appeal.

[20] In breach of the plaintiff's undertaking under cl. 5(xi) of the JVA, the plaintiff till todate had failed, neglected and/or refused to deposit the original issue document of title of the said land with Lim & Hooi as stakeholder in accordance to para. 4(c) above. Lim & Hooi had sent a letter dated 16 January 2009 to K.H. Choo requesting for the deposit of the title pursuant to cl. 5(xi) of the JVA however that request was not met. As a result of the Plaintiff's breach of undertaking to deposit the title with Lim & Hooi, the defendant is unable to surrender the title to the appropriate authorities for the purposes of applying for the issuance of separate strata title for the individual units of each lot in accordance to cl. 5(xi) of the JVA. G H I

[21] The defendant had, on 2 January 2009 delivered to the plaintiff through its JVA solicitors, M/s K.H. Choo & Co. which had acknowledged receipt on behalf of the plaintiff, the CPC and CFO of the said building together with Vacant Possession ("VP") of the plaintiff's entitlement under cl. 3(a) of the JVA namely the four (4) lots of four (4) storey shopoffices comprised in the said building constructed on the said land. The "Completion Date" of the JVA is the delivery date of the CPC on the plaintiff ie, on 2 January 2009 pursuant to cl. 4(i) of the JVA read together with cl. 6(i).

[22] The effect of delivering the CPC to the plaintiff in compliance with cl. 4(i) of the JVA shall with effect from the completion date make the defendant the beneficial owner of the said land as expressly stipulated by cl. 6(i) of the JVA. Therefore, with effect from 2 January 2009 the defendant is the beneficial owner of the said land excluding the plaintiff's entitlement under cl. 3(a) of the JVA. Clause 6(i) of the JVA reads as follows:

> With effect from the Completion Date, the Company shall be the beneficial owner of the said Land SAVE AND EXCEPT for the Plaintiff's Lots.

Conclusion

[23] Based on the reasons above stated, the plaintiff's application in encl. 2 is dismissed with costs.